IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.731 of 2000.

Date of Decision :26th November, 2007.

State of H.P. …Appellant.

Versus:

Sanjiv Kumar and another. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.Virender Verma, Addl. Advocate General.

For Respondent. Mr.G.D.Verma, Sr.Advocate with Mr.B.C.Verma, Advocate.

Sanjay Karol, J(Oral).

The present appeal arises out of the judgment dated 29th May, 2000 passed by Judicial Magistrate, Ist Class (4), Shimla, in Criminal Case No.182/2 of 1999/98 titled as State Vs. Sanjiv Kumar and another acquitting the accused persons of the charged offence under Sections 448 and 506 read with Section 34 of the Indian Penal Code.

As per the case of the prosecution, the matter was reported to the police vide complaint (Ext.PW-3/A) on the basis of which F.I.R. No.256/98 under Sections 448, 506 and 34 I.P.C. was registered with Police Station, Sadar Shimla. As per the complaint, Roshan Lal (PW-3) was a tenant and in possession of one room, one kitchen, one toilet and one

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

bathroom in the premises known as Basant Cottage, Ruldu Bhatta, Lakkar Bazar, Shimla. On 10th September, 1998, in the absence of the complainant the accused persons tress-passed into the tenanted premises and permanently closed the door of the bathroom by raising a wall with the intention of dis-possessing the complainant from the tenanted premises.

On completion of the investigation, the challan was presented in the Court for trial and the charges against the accused persons under Sections 448 and 506 read with Section 34 of the Indian Penal Code were framed. The accused persons pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined eight witnesses and the statements of the accused persons under Section 313 Cr.P.C. were also recorded. As per the accused persons, the complainant is a tenant of only two rooms and not the bathroom.

The court below, after fully appreciating the material on record came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt The witnesses had contradicted themselves and there was nothing on record to show that the accused had tress-passed into the tenanted property and taken physical possession of the alleged bathroom.

Dole Ram (PW-1) took into possession rent receipts mark-A to mark-B vide recovery memo Ext.PW-1/A.

His statement is contradictory to that of Roshanl Lal (PW-3). As per the version of Dole Ram (PW-1) the receipts were taken by him on the day when the report was lodged, whereas as per the version of PW-3 the same were handed over to PW-1 after about 10 to 15 days. Photographer Santosh Kumar (PW-2) has been rightly disbelieved for the reasons that he was not able to show who had engaged him for taking the photographs. Roshan Lal (PW-3) has also not supported the case of the prosecution. He has no where deposed that the accused persons are in possession of the disputed premises.

Surindera Gupta (PW-4) wife of the complainant has also not mentioned about the disputed premises i.e. toilet allegedly taken into possession by the accused persons. Prem Dass (PW-5) has only deposed what was conveyed to him. Therefore his testimony is based on hearsay evidence and cannot be relied upon.

Dharam Dass (PW-6) is the Investigating Officer. The testimony of Smt. Parkash Devi (PW-7) does not appear to be truthful. She appears to be a procured witness .She is a resident of Rohru and could not have been present at the site on the day of the occurrence as she was not in Shimla on that day..

It has come on record through the prosecution evidence that there are number of tenants living in the same building. Importantly, the Investigating Agency has not

examined any of the neighbours to prove the fact that the accused persons had tress-passed into the complainant's property and had dis-possessed him of the same.

The recovery memo (Ext.PW-1/A) has not been signed by any independent witness. This makes the prosecution story doubtful. It has nowhere been proved, through the testimony of the witnesses that the bathroom in question formed part of the tenanted premises. Even PW-3 has not been able to prove the said fact.

In my view, there is no clear, cogent and consistent material and evidence on record to prove the guilt against the accused persons. The dispute appears to be more of civil in nature.

The court below has acquitted the accused persons of the charged offence. The material on record has been appreciated in its entirety. There is nothing on record to show any perversity. In the facts and circumstances of the case, I see no reason to interfere with the judgment of the trial Court. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

November 26, 2007(R)